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C O N F I D E N T I A L SECTION 01 OF 03 KYIV 000803

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SUBJECT: UKRAINE: TYMOSHENKO ENTERS CONSTITUTIONAL GAME

REF: KYIV 00709

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Classified By: Ambassador for reasons 1.4(b,d).

¶1. (C) Summary. Prime Minister Tymoshenko has begun speaking publicly and forcefully for transforming Ukraine into a parliamentary system, possibly as part of an effort to force President Yushchenko into cooperation and to take away the President's lead in reforming the constitution. She first raised the issue April 16 during an address to PACE in Strasbourg -- the same day her Rada faction released its ultimatum to Yushchenko to end his criticism of the Cabinet. She has since elaborated about her ideas to the press, while her faction leader Ivan Kyrylenko raised the idea of BYuT and Regions jointly forming a constitutional commission within the Rada -- a body that would have the necessary 300 votes to override presidential vetoes and approve constitutional amendments. Probably in response to Tymoshenko's strong tactics, as well as to an April 18 Constitutional Court ruling that a new or amended constitution cannot be approved by referendum (but must be approved by the Rada), Yushchenko canceled the April 23 National Constitutional Council (NCC) meeting, where his team was scheduled to present its draft constitution. Both Tymoshenko and MP Volodymyr Lytvyn have indicated that the Rada may consider creation of its constitutional commission when the Rada returns from its holiday break on May 13. In a private conversation, Yushchenko told the Ambassador that Tymoshenko's efforts to start a parallel constitutional process was a game that would not succeed. He also reiterated his public accusations that the PM is abetted by former Kuchma Chief of Staff Medvedchuk and Regions MP Shufrych.

¶2. (C) Comment. Tymoshenko's threats to cooperate with Regions to weaken the presidency may give her some leverage with the President as she tries to calculate her strategy in the next few months. The Prime Minister may not really be wedded to one specific model of governance, but by flexing her muscles and showing that she could cooperate with Regions to form a 300-vote constitutional majority to effectively eliminate the presidency, she can exert some pressure on Yushchenko's team. However, Tymoshenko has to carefully consider what going into an alliance with Regions, even a tactical one, will do to her image -- and therefore, her preferred option may still be to strike a deal with Yushchenko. Regions is also hoping to leverage the threat of constitutional amendments to get more out of Yushchenko. In any event, a consensus is needed between the three major parties before any constitution can be adopted with credibility and authority. End Summary and Comment.

Talk of BYuT-Regions Collaboration

¶13. (SBU) On April 9, Regions deputy faction leader Yefremov announced that his party wanted to create an ad hoc commission to reform the constitution within the Rada. Regions leader Yanukovych added that his party had decided not to participate in the NCC because they believed the constitution should be amended inside the Rada. BYuT faction leader Ivan Kyrylenko confirmed to the press that BYuT and Regions were considering forming their own constitutional commission within the Rada (ref A) to eliminate "dualism of power in the executive branch." OU-PSD faction leader Vyacheslav Kyrylenko said his faction opposed the idea and the Rada agreed to postpone a decision on the issue until the following week. At the April 14 coalition meeting, OU-PSD asked BYuT to hold off on forming the Rada commission until after the April NCC meeting, scheduled for April 23, which BYuT agreed to do.

¶14. (C) Oligarch Viktor Pinchuk shared his views on constitutional reform with the Ambassador on April 22. He said that the real coalition to watch was the unofficial one between BYuT and Regions, because they had been working for two months now on changes to the constitution. One idea they were working on was that the largest faction in the Rada would select the Prime Minister and the second largest would select the President, who would also be confirmed by the parliament. Pinchuk presumed that if these changes were implemented, there would be new Rada elections. (Note. New elections would not be a requirement, but more a political agreement presumably based on whatever system was agreed in the new constitution. End note.)

Tymoshenko Takes it Farther

¶15. (SBU) Tymoshenko raised the idea of transforming Ukraine into a full parliamentary system during her speech to PACE on April 16. She said Ukraine should adopt a traditional

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parliamentary system like most European states have. Later, speaking to journalists, she said BYuT would not push for the complete elimination of the presidency as long as constitutional changes were made. She held up Poland and Germany as examples where there was a president, but most powers were held by the Prime Minister and coalition, which she said was a more transparent and democratic form of government. The PM also said that was the only logical position to have and that reforms should be done by the end of the year. On April 20, Tymoshenko said on TV that she thought the Rada would adopt in the first reading after the Easter holidays (which end May 5) the constitutional changes needed to make Ukraine a parliamentary system .

Yushchenko Denied Referendum, OU Responds Angrily to PM

¶16. (SBU) Yushchenko's team continues to work on its draft through the NCC, but on April 18, they were dealt a blow when the Constitutional Court ruled that constitutional changes could not be made via referendum, and that only the Rada had the right to amend the constitution. Not surprisingly, BYuT MPs welcomed the decision. However, on April 21, BYuT deputy faction leader Tomenko said that both the NCC process and the CC decision should be respected. He said the Presidential Secretariat would present its draft at the April 23 NCC

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session and if a majority of NCC members voted in support, then it would be the official NCC draft.

¶17. (SBU) Despite Tomenko's conciliatory comments, OU-PSD has reacted strongly to Tymoshenko's comments and the possibility of a Rada commission. OU-PSD faction leader Vyacheslav Kyrylenko said on April 21 that BYuT's actions on constitutional reform posed a threat to Ukraine's territorial integrity, which at this point can only be protected by a

strong president. He said the parliamentary system supported by BYuT, Regions, and the Communists would lead to "collective irresponsibility and the unlimited power of parliamentary oligarchic clans." He also asked BYuT to stop trying to destroy the coalition by holding talks directed against OU-PSD with the opposition. OU-PSD MP Stoiko said that if BYuT and Regions went ahead with plans to form a constitutional commission in the Rada, OU-PSD would consider dissolving the coalition. (Embassy Note. In an April 15 meeting with the Ambassador, Presidential Secretariat Head Baloha made the same statement. End Note.) BYuT expressed surprise at Kyrylenko's strong comments.

¶18. (SBU) Political analyst and OU-PSD MP Oles Doniy and Dzerkalo Tyzhnya journalist Serhiy Rakhmanin have both said that they believe Tymoshenko's comments were political blackmail to remind Yushchenko that the PM can gather 300 votes if necessary. Doniy also said that he believed almost 400 MPs supported amending the constitution solely in the Rada -- including his own PSD and part of OU.

Yushchenko's Draft: Done but Delayed?

¶19. (SBU) Both Deputy Head of the Presidential Secretariat Stavnichuk and presidential spokeswoman Vannikova told the press that the April 23 NCC meeting was being delayed until after the May holidays (meaning no sooner than May 12) because Rada Speaker Yatsenyuk was ill and could not attend. BYuT MP Portnov criticized the delay, saying that Yushchenko had canceled the meeting on false grounds, Yatsenyuk was not the only member of the council, and the President was showing disrespect to other Council members. He then said BYuT would move ahead with plans to form the Rada commission to reform the constitution, and added that he was sure this would not lead to the collapse of the coalition. OU-PSD MP Zvarych also criticized the delay, saying Yatsenyuk's "illness" was not a convincing reason to postpone the meeting and that a number of "highly respected people" had gathered at the Presidential Secretariat to discuss the amendments. Tomenko said that Yushchenko postponed the meeting because he had been dealt a blow by the CC ruling and his team was recalculating its strategy. Lytvyn said he thought the delay was due to "political differences, which have been discussed lately, (and) are also visible within the Commission." He also thought that the issue of establishing the Rada commission would be discussed at the Rada's next plenary session. (Note. The next session is currently scheduled for May 13, although there has been some discussion of moving it to May 6. As Speaker, Yatsenyuk has some power to affect the agenda, possibly allowing him to stall on the creation of the commission. End note.)

¶10. (C) At an April 24 meeting, Yushchenko told the Ambassador that Tymoshenko's efforts to conduct a parallel process to amend the constitution would break relations

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between the coalition parties, although he did not say it would collapse the coalition. He repeated the accusations that he and Chief of Staff Baloha have made in the press that Tymoshenko is working with former Kuchma Chief of Staff Viktor Medvedchuk and Regions MP Nestor Shufrych on their version of the constitution, which they would bring to the Rada commission. (Note. Shufrych is reputedly Tymoshenko's former paramour, as well as a good friend and former party associate of Medvedchuk's, which is supposedly why the three are working together. End note.) Yushchenko argued that Tymoshenko was treating the drafting of a new constitution like a game, when it should be constructive and serious work.

What's In the Draft?

¶11. (SBU) After a meeting of the NCC working group on April 22, an anonymous member leaked some of the proposed details

of the new draft to the press. According to several press accounts, the President's version of the constitution would eliminate the need for a coalition. Instead, the largest faction in the Rada would have the right to nominate the Prime Minister. If that nominee was not confirmed, the next largest faction would make a nomination. In the event of a second failure to confirm, the President would have the right to make the nomination -- refusal to confirm the President's nominee would allow the President to disband the Rada. In addition, under the proposed amendments, the President would no longer nominate the Foreign and Defense Ministers.

Another amendment would eliminate the position of oblast state administration head -- governors would be elected by raion and city councils.

¶12. (SBU) The unnamed source said that disputes within the working group remained on several items, including: constitutionally defined neutral status for Ukraine; state or official status for Russian language; a new system of parliamentary and local elections; dual citizenship; bicameral legislature; and popular veto (Yushchenko's suggestion that laws could be overturned by popular vote).

¶13. (U) Visit Embassy Kyiv's classified website:
www.state.sgov.gov/p/eur/kiev.

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